

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20580

In the Matter of)	
)	
Rules and Regulations Implementing the)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991)	CC Docket No. 92-90
)	
)	

To the Commission:

Reply Comments of the Yellow Pages Integrated Media Association

The Yellow Pages Integrated Media Association (“Yellow Pages I.M.A.”), formerly the Yellow Pages Publishers Association, is a global trade association based in Berkeley Heights, New Jersey, representing the Yellow Pages industry, both print and electronic. Yellow Pages I.M.A. members include publishers (of both Yellow and White Pages) and other businesses associated with the Yellow Pages industry. Many Yellow Pages I.M.A. members operate on-line directory services, such as Superpages.com and Switchboard.com.

I. BUSINESS-TO-BUSINESS EXEMPTION

Since the filing of our comments in this proceeding, the Federal Trade Commission (FTC) has released its amended telemarketing sales rules. The FTC addressed certain issues raised in our comments before both the FCC and FTC in a manner that is satisfactory to the Yellow Pages I.M.A. members.

In particular, Yellow Pages I.M.A. is pleased that the FTC did not adopt its proposal to eliminate the business-to-business exemption for the marketing of Internet services and Web services. The FTC noted that its proposal was “overbroad and likely to produce perverse results

for the small businesses it was intended to protect.”¹ We agree. Business-to-business telemarketing is essential for small businesses – those doing the telemarketing and those at which the telemarketing is aimed. Businesses hold themselves open to the public and do not have the same level of privacy expectations as a residential telephone subscriber. One is unlikely to disturb someone during dinnertime, or some other equally inconvenient time, when calling a place of business.

Many small businesses are operated out of residences. This can cause confusion regarding the do-not-call list and telemarketing sales rules in general. Yellow Pages I.M.A. agrees with the comments filed by SBC Communications, Inc.² and Intuit, Inc.³ urging the Commission not to equate calls directed at home businesses with calls to residential subscribers. For the purpose of this rule, the Commission should clarify that these subscribers are businesses, not residential subscribers.

II. NOTIFICATION

The Public Utilities Commission of Ohio (PUCO) notes that it is the practice of the PUCO to require certain message notifications in both annual bill inserts and in the white pages of any published directory. PUCO states, “The Ohio Commission acknowledges that the local

¹ Federal Trade Commission, Telemarketing Sales Rule, Final Amended Rule and accompanying Statement of Basis and Purpose, p. 222 (adopted December 18, 2002). See <http://www.ftc.gov/os/2003/01/frntsrslbp.pdf>

² Comments of SBC Communications Inc. in GC Docket No. 02-278, and CC Docket No. 92-90, Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Filed December 9, 2002, at P. 15.

³ Comments of Intuit, Inc. in GC Docket No. 02-278, and CC Docket No. 92-90, Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Filed December 10, 2002, at P. 6-7.

phone companies are not directly responsible for the problems and customer inconvenience resulting from telemarketing calls. Such a requirement is not unreasonable, however, since the local companies realize revenues from telemarketers directly through local exchange rates or from their IXCs through access charges.”⁴

The PUCO’s requirements ignore the fact that not all white pages directories are published by local exchange carriers. Indeed, with Qwest’s and Sprint’s recent sale of their directories, the industry is becoming less, rather than more, affiliated with local exchange carriers. There are many non-affiliated directories competing with local exchange carrier-affiliated directories. By relying on the white pages to carry the relevant information about the do-not-call list, there is a potential for customer confusion. Customers may not realize that only the local exchange carrier-affiliated directory carries certain information, while non-affiliated directories do not. Imposing a burden on the affiliated white pages directory publishers and not the non-affiliated directory publishers (over whom neither the FCC nor the state commissions have jurisdiction), creates an inherent unfairness that the Commission should avoid.

We concur with the comments filed by BellSouth urging the FCC to create a cost recovery mechanism for carriers if there is a notification requirement.⁵ Any such mandate placed upon a common carrier should not be an “unfunded mandate.”

⁴ Comments of the Public Utilities Commission of Ohio in GC Docket No. 02-278, and CC Docket No. 92-90, Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Filed December 9, 2002, at P. 17.

⁵ Comments of BellSouth in GC Docket No. 02-278, and CC Docket No. 92-90, Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Filed December 9, 2002, at P. 4-5.

III. CONCLUSION

The FTC made the right decision in not subjecting most business-to-business telemarketing to its telemarketing sales rules. The Commission should follow suit and not restrict, in any way, telemarketing sales calls made to businesses. This should apply equally to businesses located in residences and businesses located elsewhere. The Commission should also be very careful in prescribing any notification procedures, and if a notification requirement is imposed on a common carrier, the Commission should create adequate and appropriate cost recovery mechanisms.

Respectfully submitted,

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January 31, 2003